

AMENDMENTS TO LB 230

Introduced by General Affairs

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 53-123.15, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 53-123.15 (1) No person shall order or receive alcoholic
6 liquor in this state which has been shipped directly to him or her
7 from outside this state by any person other than a holder of a
8 shipping license issued by the commission, except that a licensed
9 wholesaler may receive not more than three gallons of wine in any
10 calendar year from any person who is not a holder of a shipping
11 license.

12 (2) The commission may issue a shipping license to
13 a manufacturer. Such license shall allow the licensee to ship
14 alcoholic liquor only to a licensed wholesaler, except that a
15 licensed wholesaler may, without a shipping license and for the
16 purposes of subdivision (2) of section 53-161, receive beer in
17 this state which has been shipped from outside the state by a
18 manufacturer in accordance with the Nebraska Liquor Control Act
19 to the wholesaler, then transported by the wholesaler to another
20 state for retail distribution, and then returned by the retailer
21 to such wholesaler. A person who receives a license pursuant to
22 this subsection shall pay the fee required in sections 53-124 and
23 53-124.01 for a manufacturer's shipping license. Such fee shall be

1 collected by the commission and be remitted to the State Treasurer
2 for credit to the General Fund.

3 (3) The commission may issue a shipping license to
4 any person who deals with vintage wines, which shipping license
5 shall allow the licensee to distribute such wines to a licensed
6 wholesaler in the state. For purposes of distributing vintage
7 wines, a licensed shipper must utilize a designated wholesaler if
8 the manufacturer has a designated wholesaler. For purposes of this
9 section, vintage wine shall mean a wine verified to be ten years of
10 age or older and not available from a primary American source of
11 supply. A person who receives a license pursuant to this subsection
12 shall pay the fee required in sections 53-124 and 53-124.01 for a
13 vintage wine dealer's shipping license. Such fee shall be collected
14 by the commission and be remitted to the State Treasurer for credit
15 to the General Fund.

16 (4) The commission may issue a shipping license to
17 any ~~person~~ manufacturer who sells and ships alcoholic liquor
18 from another state directly to a consumer in this state if the
19 manufacturer satisfies the requirements of subsections (7) through
20 (9) of this section. A ~~person~~ manufacturer who receives a license
21 pursuant to this subsection shall pay the fee required in sections
22 53-124 and 53-124.01 for a manufacture direct sales shipping
23 license. Such fee shall be collected by the commission and remitted
24 to the State Treasurer for credit to the Winery and Grape Producers
25 Promotional Fund.

26 (5) The commission may issue a shipping license to
27 any retailer who is licensed within or outside Nebraska, who is

1 authorized to sell alcoholic liquor at retail in the state of
2 domicile of the retailer, and who is not a manufacturer if such
3 retailer satisfies the requirements of subsections (7) through
4 (9) of this section to ship alcoholic liquor from another state
5 directly to a consumer in this state. A retailer who receives a
6 license pursuant to this subsection shall pay the fee required in
7 sections 53-124 and 53-124.01 for a retail direct sales shipping
8 license. Such fee shall be collected by the commission and remitted
9 to the State Treasurer for credit to the Winery and Grape Producers
10 Promotional Fund.

11 ~~(5)~~ (6) The application for a shipping license under
12 subsection (2) or (3) of this section shall be in such form as the
13 commission prescribes. The application shall contain all provisions
14 the commission deems proper and necessary to effectuate the purpose
15 of any section of the act and the rules and regulations of the
16 commission that apply to manufacturers and shall include, but not
17 be limited to, provisions that the applicant, in consideration of
18 the issuance of such shipping license, agrees:

19 (a) To comply with and be bound by ~~section~~ sections
20 53-162 and 53-164.01 in making and filing reports, paying taxes,
21 penalties, and interest, and keeping records;

22 (b) To permit and be subject to all of the powers granted
23 by section 53-164.01 to the commission or its duly authorized
24 employees or agents for inspection and examination of the
25 applicant's premises and records and to pay the actual expenses,
26 excluding salary, reasonably attributable to such inspections and
27 examinations made by duly authorized employees of the commission

1 if within the United States; and

2 (c) That if the applicant violates any of the provisions
3 of the application or the license, any section of the act, or
4 any of the rules and regulations of the commission that apply to
5 manufacturers, the commission may ~~revoke or~~ suspend, cancel, or
6 revoke such shipping license for such period of time as it may
7 determine.

8 (7) The application for a shipping license under
9 subsection (4) or (5) of this section shall be in such form as the
10 commission prescribes. The application shall require an applicant
11 which is a manufacturer, a craft brewery, a craft distillery, or
12 a farm winery to identify the brands of alcoholic liquor that
13 the applicant is requesting the authority to ship either into or
14 within Nebraska. For all applicants, unless otherwise provided in
15 this section, the application shall contain all provisions the
16 commission deems proper and necessary to effectuate the purpose
17 of any section of the act and the rules and regulations of the
18 commission that apply to manufacturers or retailers and shall
19 include, but not be limited to, provisions that the applicant, in
20 consideration of the issuance of such shipping license, agrees:

21 (a) To comply with and be bound by sections 53-162 and
22 53-164.01 in making and filing reports, paying taxes, penalties,
23 and interest, and keeping records;

24 (b) To permit and be subject to all of the powers granted
25 by section 53-164.01 to the commission or its duly authorized
26 employees or agents for inspection and examination of the
27 applicant's premises and records and to pay the actual expenses,

1 excluding salary, reasonably attributable to such inspections and
2 examinations made by duly authorized employees of the commission if
3 within the United States;

4 (c) That if the applicant violates any of the provisions
5 of the application or the license, any section of the act, or
6 any of the rules and regulations of the commission that apply to
7 manufacturers or retailers, the commission may suspend, cancel, or
8 revoke such shipping license for such period of time as it may
9 determine;

10 (d) That the applicant agrees to notify the commission of
11 any violations in the state in which he or she is domiciled and any
12 violations of the direct shipping laws of any other states. Failure
13 to notify the commission within thirty days after such a violation
14 may result in a hearing before the commission pursuant to which the
15 license may be suspended, canceled, or revoked; and

16 (e) That the applicant, if a manufacturer, craft brewery,
17 craft distillery, or farm winery, agrees to notify any wholesaler
18 licensed in Nebraska that has been authorized to distribute such
19 brands that the application has been filed for a shipping license.
20 The notice shall be in writing and in a form prescribed by the
21 commission. The commission may adopt and promulgate rules and
22 regulations as it reasonably deems necessary to implement this
23 subdivision, including rules and regulations that permit the holder
24 of a shipping license under this subdivision to amend the shipping
25 license by, among other things, adding or deleting any brands of
26 alcoholic liquor identified in the shipping license.

27 (8) Any manufacturer or retailer who is granted a

1 shipping license under subsection (4) or (5) of this section
2 shall:

3 (a) Only ship the brands of alcoholic liquor identified
4 on the application;

5 (b) Only ship alcoholic liquor that is owned by the
6 holder of the shipping license;

7 (c) Only ship alcoholic liquor that is properly
8 registered with the Alcohol and Tobacco Tax and Trade Bureau of the
9 United States Department of the Treasury;

10 (d) Not ship any alcoholic liquor products that the
11 manufacturers or wholesalers licensed in Nebraska have voluntarily
12 agreed not to bring into Nebraska at the request of the commission;

13 (e) Not ship more than nine liters of alcoholic liquor
14 per month to any person in Nebraska to whom alcoholic beverages
15 may be lawfully sold. All such sales and shipments shall be for
16 personal consumption only and not for resale; and

17 (f) Cause the direct shipment of alcoholic liquor to
18 be by approved common carrier only. The commission shall adopt
19 and promulgate rules and regulations pursuant to which common
20 carriers may apply for approval to provide common carriage of
21 alcoholic liquor shipped by a holder of a shipping license issued
22 pursuant to subsection (4) or (5) of this section. The rules
23 and regulations shall include provisions that require (i) the
24 recipient to demonstrate, upon delivery, that he or she is at
25 least twenty-one years of age, (ii) the recipient to sign an
26 electronic or paper form or other acknowledgement of receipt as
27 approved by the commission, and (iii) the commission-approved

1 common carrier to submit to the commission such information as the
2 commission may prescribe. The commission-approved common carrier
3 shall refuse delivery when the proposed recipient appears to be
4 under the age of twenty-one years and refuses to present valid
5 identification. All holders of shipping licenses shipping alcoholic
6 liquor pursuant to this subdivision shall affix a conspicuous
7 notice in sixteen-point type or larger to the outside of each
8 package of alcoholic liquor shipped within or into the State of
9 Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC
10 BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED
11 FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a
12 common carrier shall constitute a violation by the common carrier.
13 The common carrier and the holder of the shipping license shall be
14 liable only for their independent acts.

15 (9) For purposes of sections 53-160, 77-2703, and
16 77-27,142, each shipment of alcoholic liquor by the holder of a
17 shipping license under subsection (3), (4), or (5) of this section
18 shall constitute a sale in Nebraska by establishing a nexus in the
19 state. The holder of the shipping license shall collect all the
20 taxes due to the State of Nebraska and any political subdivision
21 and remit any excise taxes monthly to the commission and any sales
22 taxes to the Department of Revenue.

23 Sec. 2. Section 53-124, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 53-124 (1) At the time application is made to the
26 commission for a license of any type, the applicant shall pay
27 the fee provided in section 53-124.01 and, if the applicant is

1 an individual, provide the applicant's social security number. The
2 commission shall issue the types of licenses described in this
3 section.

4 (2) There shall be an airline license, a boat license,
5 and a railroad license. The commission shall charge one dollar for
6 each duplicate of an airline license or a railroad license.

7 (3)(a) There shall be a manufacturer's license for
8 alcohol and spirits, for beer, and for wine. The annual fee
9 for a manufacturer's license for beer shall be based on the barrel
10 daily capacity as follows:

11 (i) 1 to 100 barrel daily capacity, or any part thereof,
12 tier one;

13 (ii) 100 to 150 barrel daily capacity, tier two;

14 (iii) 150 to 200 barrel daily capacity, tier three;

15 (iv) 200 to 300 barrel daily capacity, tier four;

16 (v) 300 to 400 barrel daily capacity, tier five;

17 (vi) 400 to 500 barrel daily capacity, tier six;

18 (vii) 500 barrel daily capacity, or more, tier seven.

19 (b) For purposes of this subsection, daily capacity means
20 the average daily barrel production for the previous twelve months
21 of manufacturing operation. If no such basis for comparison exists,
22 the manufacturing licensee shall pay in advance for the first
23 year's operation a fee of five hundred dollars.

24 (4) There shall be five classes of nonbeverage users'
25 licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

26 (5) In lieu of a manufacturer's, a retailer's, or a
27 wholesaler's license, there shall be a license to operate issued

1 for a craft brewery, a farm winery, or a microdistillery.

2 (6) (a) There shall be five classes of retail licenses:

3 (i) Class A: Beer only, for consumption on the premises;

4 (ii) Class B: Beer only, for consumption off the
5 premises, sales in the original packages only;

6 (iii) Class C: Alcoholic liquor, for consumption on the
7 premises and off the premises, sales in original packages only. If
8 a Class C license is held by a nonprofit corporation, it shall be
9 restricted to consumption on the premises only. A Class C license
10 may have a sampling designation restricting consumption on the
11 premises to sampling, but such designation shall not affect sales
12 for consumption off the premises under such license;

13 (iv) Class D: Alcoholic liquor, including beer, for
14 consumption off the premises, sales in the original packages only,
15 except as provided in subsection (2) of section 53-123.04; and

16 (v) Class I: Alcoholic liquor, for consumption on the
17 premises.

18 (b) All applicable license fees shall be paid by the
19 applicant or licensee directly to the city or village treasurer in
20 the case of premises located inside the corporate limits of a city
21 or village and directly to the county treasurer in the case of
22 premises located outside the corporate limits of a city or village.

23 (7) There shall be ~~three~~ four types of shipping licenses
24 as described in section 53-123.15: Manufacturers, vintage wines,
25 ~~and manufacture direct sales, and retail direct sales.~~

26 (8) There shall be two types of wholesale licenses:
27 Alcoholic liquor and beer only. The annual fee shall be paid for

1 the first and each additional wholesale place of business operated
2 in this state by the same licensee and wholesaling the same
3 product.

4 (9) The license year, unless otherwise provided in the
5 Nebraska Liquor Control Act, shall commence on May 1 of each year
6 and shall end on the following April 30, except that the license
7 year for a Class C license shall commence on November 1 of each
8 year and shall end on the following October 31. During the license
9 year, no license shall be issued for a sum less than the amount of
10 the annual license fee as fixed in section 53-124.01, regardless
11 of the time when the application for such license has been made,
12 except that (a) when there is a purchase of an existing licensed
13 business and a new license of the same class is issued or (b) upon
14 the issuance of a new license for a location which has not been
15 previously licensed, the license fee and occupation taxes shall be
16 prorated on a quarterly basis as of the date of issuance.

17 Sec. 3. Section 53-124.01, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 53-124.01 (1) The fees for annual licenses finally issued
20 by the commission shall be as provided in this section and section
21 53-124.

22 (2) Airline license ... \$100

23 (3) Boat license ... \$50

24 (4) Manufacturer's license:

25 Class	Fee - In Dollars
26 Alcohol and spirits	1,000

1	Beer - tier one	100
2	Beer - tier two	200
3	Beer - tier three	350
4	Beer - tier four	500
5	Beer - tier five	650
6	Beer - tier six	700
7	Beer - tier seven	800
8	Wine	250

9 (5) Nonbeverage user's license:

10	Class	Fee - In Dollars
11	Class 1	5
12	Class 2	25
13	Class 3	50
14	Class 4	100
15	Class 5	250

16 (6) Operator's license:

17	Class	Fee - In Dollars
18	Craft brewery	250
19	Farm winery	250
20	Microdistillery	250

21 (7) Railroad license ... \$100

22 (8) Retail license:

1	Class	Fee - In Dollars
2	Class A	100
3	Class B	100
4	Class C	300
5	Class D	200
6	Class I	250

7 (9) Shipping license:

8	Class	Fee - In Dollars
9	Manufacturer	1,000
10	Vintage wines	1,000
11	Direct <u>Manufacture direct sales</u>	500
12	<u>Retail direct sales</u>	<u>500</u>

13 (10) Wholesale license:

14	Class	Fee - In Dollars
15	Alcoholic liquor	750
16	Beer	500

17 Sec. 4. Section 53-162, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 53-162 For the purpose of raising revenue, a tax is
20 imposed upon persons holding a shipping license issued pursuant
21 to subsection (4) or (5) of section 53-123.15 who ship alcoholic
22 liquor to individuals pursuant to section 53-192 and for which
23 the required taxes in the state of purchase or this state have

1 not been paid. The tax, if due, shall be paid by the holder
2 of the shipping license issued pursuant to subsection (4) or (5)
3 of section 53-123.15. The amount of the tax shall be imposed as
4 provided in section 53-160. The tax shall be collected by the
5 commission, except that the tax shall not be due until December
6 31 of the year in which the purchase was made. The tax shall be
7 delinquent if unpaid within twenty-five days after December 31.
8 The revenue from the tax shall be credited to the General Fund.
9 The commission shall adopt and promulgate rules and regulations to
10 carry out this section.

11 Sec. 5. Section 53-304, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 53-304 Each Nebraska winery shall pay to the Nebraska
14 Liquor Control Commission twenty dollars for every one hundred
15 sixty gallons of juice produced or received by its facility.
16 Gifts, grants, or bequests may be received for the support of
17 the Nebraska Grape and Winery Board. Funds paid pursuant to the
18 charge imposed by this section and funds received pursuant to
19 subsection (4) or (5) of section 53-123.15 and from gifts, grants,
20 or bequests shall be remitted to the State Treasurer for credit
21 to the Winery and Grape Producers Promotional Fund which is hereby
22 created. For administrative purposes, the fund shall be located in
23 the Department of Agriculture. All revenue credited to the fund
24 pursuant to the charge imposed by this section and excise taxes
25 collected pursuant to section 2-5603 and any funds received as
26 gifts, grants, or bequests and credited to the fund shall be used
27 by the department, at the direction of and in cooperation with

1 the board, to develop and maintain programs for the research and
2 advancement of the growing, selling, marketing, and promotion of
3 grapes, fruits, berries, honey, and other agricultural products and
4 their byproducts grown and produced in Nebraska for use in the wine
5 industry. Such expenditures may include, but are not limited to,
6 all necessary funding for the employment of experts in the fields
7 of viticulture and enology, as deemed necessary by the board,
8 and programs aimed at improving the promotion of all varieties
9 of wines, grapes, fruits, berries, honey, and other agricultural
10 products and their byproducts grown and produced in Nebraska for
11 use in the wine industry.

12 Funds credited to the fund shall be used for no other
13 purposes than those stated in this section and any transfers
14 authorized pursuant to section 2-5604. Any funds not expended
15 during a fiscal year may be maintained in the fund for distribution
16 or expenditure during subsequent fiscal years. Any money in the
17 fund available for investment shall be invested by the state
18 investment officer pursuant to the Nebraska Capital Expansion Act
19 and the Nebraska State Funds Investment Act.

20 Sec. 6. Original sections 53-124, 53-124.01, 53-162,
21 and 53-304, Reissue Revised Statutes of Nebraska, and section
22 53-123.15, Revised Statutes Cumulative Supplement, 2012, are
23 repealed.